1950.

File No. S. Bij. 2/50

Legal DEPARTMENT

A BRANCH

Subject:— Civil Suit No. 192 of 1949.

Mukkanna Gurbasappa kori

V/s.

The Province of Bombay.

For a declaration that the open site situated in the village Dhavalgi near the Muddebihal Bageweadi Rd and measuring 32X50 cubits is of the plaintiff's ownership and for a consequential injunction.

Civil Appeal No. 153 of 1951

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File No. S.Bij 2/50

Std. Scott, Slip 24 A—1626—5,000—6-49

S.Bij 2/50

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C.S.No. 192 of 1949.

M. G. Kori

V/s.

The Trovince of B'bay.

For a declaration that the open site is of the plff's ownership and for a consequential injunction.

1-62.

Information under Rule 118 of the Law Officers Rules.

.....

1. The No. of suit.	192 of 49.
2. The date on which and the Court in which it was instituted.	TheCourt of the Civil Judge, Senior Division, Bijapur on 30-5-1949.
3. The names of parties.	1. Mr. M.G.Kori of Dhavalgi taluka Muddebihal. Vs. 1. The Province of Bombay. 1. Malhar) Maloji Kapatkar 2. Shivaji) of Dhavalgi. 3. Nagendra)
4. The amount or value of the claim.	Rs. 205/- plus Court fee stamp and Pleader's fees.
5. The date fixed by the Court for the first hearing.	25-7-1949.
6. Whether the notice of the action has been given under Sec. 80 of the C.P.C. and if so the date of delivery of such notice.	Yes. Notice required under Sec. 80 has been issued to the Collector of Bijapur.
Xx II. The following papers shall be sent along with the reports.	
(a) A copy of the plaint in the regional language together with copies of any documents or list of documents annexed to the plaint.	The plaintiff has given the plaint in English and not in regional language. No documents are attached to the plaint.
(b) Translation of the same in English typed in half margin, the more important of the statements therein being distinctly marked with letters (a) and (b) etc. and notes being added in the margin stating whether such statements are correct or not and if not in what respect they are inaccurate (when a requisite explanation cannot be thus compressed reference should be made to the paragraph of the accompanying statement in which the matter should be fully discussed of the circumstances which led to the suit.	The cause of action for this suit arose on 5-5-1948 as per order of the P.O. dated 5-5-1948(pages 1 to 3 file No. IV). The Collector upheld the P.O's order and dismissed the appeal of the plaintiff under his No. L.N.D.A.P. 27 of 16-8-1948 (pages 25, file IV).
(c) A full detailed statement (i) of the course which it is proposed to adopt namely whether to admit compromise or defend the suit and of the reasons for the same and,	The suit may be defended on the strength of the P.O's order No. L.B.P. 526 of 5-5-48 and Collr's order No. L.N.D.A.P. 27 of 16-8-48. (Pages 1 to 3 and 25, file No.IV).
(ii) If it is proposed to defend the suit, of the ground on which it is proposed to base the defence and of the evidence to be adduced.	From the enquiry under Sec. 37(2) of L.R.C. held by the P.O. the defence of the suit may be based on the evidence of Exs. 1 to 13 (file No.I) and Ex. 14A and 21A (file No. III).
(d) If the turns on documentary evidence (or the original) relied on by the plaintiff (if procurable) and by the defence).	The gift deed is relied on by the plff. The G.B. Map and xxxx other oral evidence are relied on by the defence (pages 33 to 35 and 1 to 29 and 51 file No. III)

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(e) All the papers and written proceedings whether in English or in any regional language connected with the subject matter of the suit together with translation in English of all the important papers which are in regional language.	All the important papers and documents statements are duly translated in English.
(f) A statement in English containing a brief description of all the documents referred to in clauses (d) and (e) above which are in the regional language.	In the gift deed produced by the Plaintiff it is mentioned that to the south there is an open space belonging to Gursangappa, father of the plaintiff, Gursangappa signed the deed as a witness. It is a statement made by a party to another in a private document. It is not binding on Govt. The G.B. map was not drawn to scale. So it has no evidentiary value.

for Collector, Bijapur.

In the Court of the Civil Judge, Senior Division, at Bijapur.

1. Lakkanna Gursangappa Kori, age 50, Lingayat, agriculture of Dhavalgi, Taluka Muddebihal. ----- Plaintiff.

Vs.

1. The Province of Bombay.
2. Malhar age 45) Maloji Kapatkar,
3. Shivaji " 40) Bhavasag Kshatriya,
4. Nagendra " 25) traders of Dhavalgi, Tal. Muddebihal. ----
Defendants.

Claim Rs. 205/-

(suit for declaration and injunction.)

The plaintiff begs to submit as under

(1) There is an open site belonging to plaintiff at Dhavalgi village in Muddebihal Taluka of the Bijapur List., measuring east-west about 32 cubits and north-south about 60 cubits and bounded over as under :-

East: Open site.
West : Road.
North :- Houses of plff. and his bhaubands now in the occupation of Hanmantappa Iliger (vendee from plff's father) and Irawwa Lakkasgi (donee from plff's divided bhauband Madivalappa Amateppa).

South : Lane.

The site is in the wahivat of the plff and his ancestors since ancient times.

(2) Defendant 4 it is said is a congress-worker and claims a conviction to his credit in the congress movement of 1942. He and defendants 2 and 3 (who are all borthers) moved the Revenue Officers to grant the site and other open space adjoining to them on nominal occupancy price saying it was Govt. site. The Revenue officials without calling for objections from the plaintiff, without an open public sale and without any sort of enquiry under Section 37(2) L.R.C. was held and it has been decided by the Prant Officer, that the site belongs to Govt. Hence his say that no opportunity was given to him is not tenable.

the site, recommended the grant of proceeds to defendants nos. 2 to 4. The orders ultimately culminated in the Division, the Prant Officer, Bagalkot 31-3-1947, Vijapur No. L.R.P. 526 dated defendants granting the whole site to occupancy pri[illegible] 2 to 4 on payment of of annas [illegible] of Rs. 35/- and assessment includes [illegible] The site so granted [illegible] site.

(3) On the strength of the order, defendants Nos. 2 to 4 came to the site and began to dig and take measurements regarding the proposed buildings to be erected thereon by them. Then for the first time, plaintiff and others made inquiries and learnt that defendants Nos. 2 to 4 had managed to acquire the suit site and the adjoining open space.

The defendants will have to be consulted.

(4) The plaintiff then moved the authorities saying that the suit site was his from the days of his forefathers and in his wahivat and that it could not be do it with by Govt. as their own in such summary fashion.

This has been fully discussed in the enquiry under Sec. 37L.R.C. (P.1-3 file IV). The plaintiff has failed to prove his title then. His say is not tenable.

(5) Some other villagers also represented to Govt. that if the site really belonged to Govt., it should be put up for public auction and that they would offer hundreds of rupees for the same and that the price of Rs. 35/- for which it was given to the defendants 2 to 4 was miserably low.

The site was granted to other defendants on the strength of the Mamletdar's report based upon the enquiry held by him which did not reveal any demand for the site from anybody else. His say is baseless.

(6) Govt. rejected their proposals but directed the Collector to hold an inquiry under section 37(2) of the land revenue code as regards the claim of the plaintiff to the suit site.

Enquiry under Sec. 37(2) L.R.C. regarding the plaintiff's plaint to the suit site was duly held as per Govt. orders.

(7) Accordingly, the Prant officer, Bagalkot Dn., Bijapur, held inquiry under section 37(2) and by his order No. L.B.P. 526 dated 5-5-48 decided that "the site shown in the sketch at page 3 of file no. III belong to the owners ip of Government". The said site includes the site in dispute in this suit. It is submitted that this order is not only wrong but ultra vires.

His say is untenable as he failed to prove his title over the site in question.

(8) An appeal against this order filed by the plaintiff was rejected by the Collector on 10-5-48.

(9). On the strength of these orders and the order No. L.B.P. 526 dated 31-3-47 referred to in para 2 above, the defendants Nos. 2 to 4 are - obstructing plaintiff's title, possession and enjoyment of the suit site. Hence the suit.

(10) Cause of action for the suit accrued on 5-5-48 on which date the Prant Officer, Bagalkot Ln.,Bijapur passed his order referred to in para 7 above and subsequently on the various days on which defendants Nos. 2 to 4 obstructed plaintiff's vahivat of the suit site on the strength of order dated 31-3-47.

(11) Valuation :- For delcation Rs. 200
For injuncition " 5
Total 205

Court fee is paid on Rs. 205/-

(12) For jurisdiction and pleader's fees, valuation is the same.

(13) Notice under section 80 of the Code of Civil Procedure has been given to the Collector on and is received him on

(14). The prayer of the plaintiff is that :
(A) It be declared that the suit site of the ownership of the plaintiff.
(B) Defendants be permanently restrained from obstructing plaintiff's enjoyment and wahivat of the same.
(C) Costs of the suit be awarded to the plaintiff.
(D) Such further and other reliefs to which the plaintiff may be found entitled to be granted.

Bijapur.
Dated 1-2-49. sd.xx xx
Plaintiff.

I, Mukka.ma Gurusangappa Kori, of Savalgi, Taluka Muddebihal, Dist. Bijapur, the abovenamed plaintiff, do hereby solemnly state that the contents of the above plaint in paras 1 to 14 which are explained to me in Kannada are true to the best of my knowledge, information and belief

Bijapur.
Dated 1-2-1949

sd. x x
Plaintiff.

Bijapur,
30-7-1949

for Collector, Bijapur

BIJAPUR CIVIL SUIT NO. 192 of 1949.

This ~~is a~~ suit is for a declaration that the open village site adjacent to the Muddebihal Bagewadi Road in the village Dhavalgi is of the plaintiff's ownership. In the inquiry under sec. 37(2), the Prant Officer found that the site belonged to Govt. and the plaintiff had no proof to show his ownership. In appeal this order was confirmed by the Collector and being aggrieved the plaintiff has now filed the present suit. The suit is defensible. Sanction may be accorded to the defence of the suit on the lines of the appended brief. A written statement to be filed on behalf of Govt. is also put up for approval.

15/10

AS 17/10/49

17/10

18.10.49

RECEIVED IN RE... on 16.10.49

L. D. 19 OCT 1949

No. 1577
18-10-1949

17 25

In the Court of the Civil Judge, Senior Division, Bijapur.

Civil Suit No. 192 of 1949.

Mukkanna Gurbasappa Kori. ..... Plaintiff;

Vs.

The Province of Bombay. ..... Defendant.

The written statement on behalf of the defendant above-named is as follows :-

1. The plaintiff's claim is denied in toto.

2. It is denied that the suit land belongs to the plaintiff or was in his possession. The plaintiff is put to strict proof of it.

3. The suit land is open village site and is the property of Government.

4. The Order of the Prant Officer in the inquiry under section 37(2) of the Land Revenue Code is correct and binding on the plaintiff.

5. The plaintiff has filed the suit without preferring all the appeals allowed by law. The suit is therefore barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876.

6. It is therefore submitted that the plaintiff is not entitled to any relief and the suit should be dismissed with costs.

District Government Pleader, Bijapur.

I, District Government Pleader, Bijapur, do hereby declare that what is stated in paragraphs 1 to 6 above is true according to the information received and believed to be true. This verification is made at on the day of 1949.

District Government Pleader, Bijapur.

K. 14/10.

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Civil Suit No. 192 of 1949.

Issues.

1. Whether the plaintiff proves his title to the suit site ?

2. Whether the plaintiff was in possession of the suit site on the date of suit ?

3. Whether Government has title to the suit site ?

4. Whether the suit is barred under the Bombay Revenue Jurisdiction Act ?

5. Whether defendant No.2 to 4 and their predecessors have perfected their title by adverse possession ?

6. Whether the plaintiff is entitled to the declaration and injunction sought ?

7. What orders ?

No more sought

January 9,1950.

Sd. A.C.Sequeira
Civil Judge Sr.Dn.

" True Copy "

Dist. Govt.Pleader,
Bijapur.

Suits.

Bijapur.

For a declaration that the open site situated in the village Dhavalgi near the Muddebihal Bagewadi Road and measuring 32×50 cubits is of the plaintiff's ownership and for a consequential injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 12613.

Bombay Castle, 8th November 1949.

Letter from the Collector of Bijapur, No. LAW 194, dated the 2nd August 1949—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT No. 192 OF 1949.

Mukkanna Gurbasappa Kori ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 11814, dated the 24th October 1949—Forwarding a copy of the brief with its accompaniments in advance.

[P.T.O.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original

G. R.. No. 12613, L.D., dated the 8th November 1949.

To

*Revenue Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Issued
C.M.
7/3/50

Sabbd. after issue
File in S. Bijapur/50 (new)
8.3
AS 2477

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BIJAPUR CIVIL SUIT NO. 192 OF 1949.

Chronological Statement of Facts.

This suit is filed by Mr. M. G. Kori, for a declaration that the open site situated in the village Dhavalgi near the Muddebihal Bagewadi Road and measuring 32×50 cubits is of his ownership and for a permanent injunction against Government.

2. Messrs. Nagendra Malaji Kapatkar and his two brothers applied for the grant of the open village site of Dhavalgi and after necessary inquiries the Prant Officer, Bagalkot Division, Bijapur, by his order No. L.B.P. 526, dated the 31st March 1947, granted three plots each measuring $40' \times 40'$ as shown in the sketch, dated 15th March 1947, to the applicants on payment of the occupancy price of Rs. 35 and Non-Agricultural assessment of annas eight.

p. 31 File I.

p. 3 File I.

3. On 23rd April 1947, the plaintiff represented to the Collector of Bijapur that the site belonged to him and was in his possession and that an inquiry should be held in the matter. Some other persons also made representations that the site was sold at a low price and that it would fetch a higher price if sold by public auction.

pp. 39-47 File I.

4. On 16th July 1947, Government in letter No. 31883-B, dated 16th July 1947, directed the Collector to hold an inquiry into the claim of the plaintiff under section 37(2) of the Land Revenue Code, 1879, and rejected the request of other persons that the site should be sold by auction.

p. 1 File II.

5. An inquiry was accordingly held by the Prant Officer, Bagalkot Division, Bijapur, who by his order No. L. B. P. S. R. 526, dated the 5th May 1948, decided that the claim of Mr. Mukhanna Kori was untenable and that the site belonged to Government. Against this order the plaintiff preferred an appeal to the Collector but the same was dismissed on 16th August 1948.

pp. 1-3 File IV.

p. 25 File IV.

6. On 1st February 1949, the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code, 1908, and on 30th May 1949 filed the suit in the Court of the Civil Judge, Senior Division, Bijapur, for the reliefs stated above.

Grounds of Defence.

1. *Bar under the Bombay Revenue Jurisdiction Act.*—The plaintiff did not prefer any appeal against the Collector's Order, dated 16th August 1948. He has not thus exhausted all the appeals that were available to him under the law. The suit is, therefore, barred under section 11 of the Bombay Revenue Jurisdiction Act, 1876.

2. *Merits.*—The plaintiff's allegations regarding his title to the suit land should be denied and it should be urged that under sections 101 and 102 of the Indian Evidence Act the burden of proof of his title lies heavily on him. There is already a decision of the Prant Officer confirmed by the Collector, declaring the land in dispute to be of Government's ownership. That decision is *prima facie* legal and *intra vires* and the Court will be guided by it unless it is shown that it is wrong and that the land belongs to the plaintiff. Secondly, the land in dispute has all

along been lying as an open space and therefore a presumption of Government's title arises under section 37(*1*) of the Land Revenue Code (*Vasta* v. *Secretary of State*, I.L.R. 45 Bom. 789). The plaintiff did not have juridical possession of lands at any time. His possession, if at all, consisted in storing manure, fuel and dung cakes. Such user of open village sites is premitted to villagers but it is not sufficient to prove or to amount to legal possession.

The plaintiff has relied on two documents in support of his title. The first one is a gift deed passed by Mr. M. A. Kori in favour of his daughter Irawa Kom Bassappa. The document contains a statement that to the south of the house of M. A. Kori there is an open space of Gurusangappa Kori who was plaintiff's father. Government was not a party to this document and is not bound by the recital contained therein (*Bangachandra* v. *Jagat Kishore*), 44 Cal. 186; *Shrinivas* v. *Meherbai*, 43 Bom. 300, (P.C.) and such recitals can have little value as evidence, if not corroborated by evidence of possession. The second document is the Gharabasti map drawn in the year 1875. The map is not drawn to scale and has little or no evidentiary value. Thus the plaintiff has no documentary evidence in support of his case. If he leads any oral evidence, the witnesses should be tested and in most cases it would be found that there is no basis for the plaintiff's claim.

3. For all these reasons it should be urged that the suit fails and should be dismissed with costs.

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Received on 30-5-1949.
Registeredon 13-6-1949.
Decided on 26-2-1951.
Y. M.Ds.
Duration 1-8-24.

IN THE COURT OF THE CIVIL JUDGE,SENIOR DIVISION.

AT BIJAPUR.

Civil Suit No.192 of 1949.

Shri R.S.Ambekar.

1. Mukkanna Gursangappa Kori,
age 50, agriculture of
Dhavalgi, taluka Muddebihal. plaintiff.

Against.

Shri K.R.Rao,
Dist.Govt.Pleader,
Shri G.L.Kanabur
for defendants
Nos. 2 to 4.

1. The Province of Bombay.
2. Malhar age 45 | Maloji
3. Shivaji " 40 | Kapatkar,
4. Nagendra 28 | traders of
Dhavalgi, taluka Muddebihal. defendants.

Claim Rs. 5/-, (Suit for declaration & Injunction).

JUDGMENT.

The plaintiff sues to obtain a declaration that he is the owner of the suit site, and a perpetual injunction restraining the defendants from obstructing him in the possession and enjoyment of the same, and to recover the costs of the suit.The plaintiff states as follows:- At Dhavalgi the plaintiff owns an open site measuring 32 cubits from the east to the west and 50 cubits from the north to the south, and bounded on the east by another open site, on the west by the public road, on the north by the houses of Hanamantappa Ilager and Iravva Rakkasagi, and on the south by a lane.The plaintiff is in possession thereof since the time of his ancestors.The defendants Nos. 2,3 and 4 are co-brothers.On 31-3-1947 they obtained a lease from the revenue officers of a bigger open site, which includes the suit site.The plaintiff applied to Government claiming the suit site as his.An enquiry under

section 37(2) of the Bombay Land Revenue Code was then held as regards the plaintiff's claim. By an order dated 6-5-1948 the Prant Officer who held the enquiry, rejected the plaintiff's claim and declared that the sites leased to the defendants Nos. 2 to 4 were of the ownership of Government. From that order the plaintiff preferred an appeal to the Collector, but the appeal was rejected on 10-9-1948. The plaintiff then preferred a second appeal from the Collector's order to the Commissioner, before whom it is yet pending. On the strength of the above orders of the revenue officers the defendants Nos. 2 to 4 disturbed the plaintiff's possession and enjoyment of the suit site.

2. By his written statement Exh.15 the defendant No.1 contends as follows:- The suit site was the property of Government. The order made by the Prant Officer in the enquiry under section 37(2) of the Bombay Land Revenue Code is correct. The plaintiff has filed the suit without preferring all appeals allowed by law from the Prant Officer's order. The suit is, therefore, barred under section 11 of the Bombay Revenue Jurisdiction Act. The plaintiff is not the owner of the suit site, and was never in possession thereof.

3. By the written statement Exh.17 the defendant No.4 contends as follows: The defendants Nos 2 to 4 are in possession of the suit site, and the plaintiff is not. He is not, therefore, entitled to the injunction sought by him. The plaintiff and his predecessors in title were not in possession of the suit site within 12 years before the suit. The suit is barred by limitation. The defendants Nos. 2 to 4 have acquired title to the suit site by adverse possession. The plaintiff has no title to the suit site. The order made by the Prant Officer in the enquiry under section 37(2) of the Bombay Land Revenue Code is correct.

4. By the pursis Exh. 18 the defendants Nos. 2 and 3 adopt

21 92

the defendant No.4's above written statement Exh.17.

5. My learned predecessor Shri A.C.Aequeira framed the following issues:-

(1). Whether the plaintiff proves his title to the suit site ?

(2). Whether the plaintiff was in possession of the suit site on the date of suit ?

(3). Whether Government has title to the suit site ?

(4). Whether the suit is barred under the Bombay Revenue Jurisdiction Act ?

(5). Whether defendant Nos. 2 to 4 and their predecessors have perfected their title by adverse possession ?

(6). Whether the plaintiff is entitled to the declaration and injunction sought ?

(7). What orders ?

6. My findings on the above issues are :-

1. No. 2. No. 3. Yes. 4. No.

5. Finding not necessary. 6. No. 7. See below.

Reasons.

7. This suit relates to a portion of an open site situate within the Gaothan of Dhavalgi village.Two maps of the suit site are on the record of this suit.The map Exh.66 was prepared in December 1947 in the enquiry under section 37(2) of the Bombay Land Revenue Code.The map Exh.77 is prepared by a Commissioner appointed by the Court in this suit; the Commissioner has given some explanations regarding that map in his report Exh.45. The map Exh.66 is accurate an drawn to scale.The Map Exh. 77 is only a rough sketch and not drawn to scale.The open site in question lies on the east of the Muddebihal Road.In the map Exh 66 the houses of Rajappa Ilager and Madivalappa Rakkasagi are shown on the north of the site.In the map Exh.77 the houses of Hanamantappa Ilager, Iravva Rakasagi, Mahantappa Kori and Madivalappa Kori are shown on the north of the site.The house shown as Rajappa Ilager's in the map Exh.66 is the same as that shown as Hanmantappa Ilager's in the mapExh.77

The houses shown in the map Exh.77 as belonging to Irava Rakkasagi, Mahantappa Kori and Madivalappa Kori together form the house shown as Madivalappa Rakkasagi's in the map Exh.66. In the map Exh.77 the southern boundary of Hanmantappa Ilager's house is shown to measure 22½ feet. In the map Exh.66 the southern boundary of Rajappa Ilager's house is shown to measure 22 feet. As the two houses are the same, I think that the southern boundary of Hanamantappa Ilager's house in the map Exh.77 measures 22 feet only. The plaintiff says that his open space lies on the south of the houses belonging to Hanamantappa Ilager and Iravva Rakkasagi only. As the two houses are together 45 feet in width, his open space should, acco ding to him, measure 45 feet from the west to the east. He says that his open site measures 63 feet from the north to the south. The suit site claimed by the plaintiff as his is marked A X Y M in the map Exh.66. It forms a part of the bigger open space A B C D. in that map. It will be seen that the strip of the open space X B L. Y lies between the suit site A X Y M and the house of Shivappa Daddanna-var in that map. On the west of the suit site lies the Huddebihal road. The plaintiff says that on the south of the suit site there is a lane leading to the house of Dyamavva Waddar, and that the open space to the south of the lane was formerly occupied by the houses belong to some Koravers and Waddars. At present there is no lane or house to the south of the suit site. The whole site A.B C D in the map Exh.66 is one open space. Vide note No.10 in the Commissioner's report Exh.45. Reference may be made here to another sketch of the suit site Exh.71, which was prepared in March 1947. In that sketch a lane is shown to the south of the whole open space which is marked A B C D in the map Exh.66. To the south of that lane some open space is shown in that sketch. The lane which acco ding to the plaintiff lies to the south of the suit site A X Y M in the map Exh.66 is not the same as the lane shown in the sketch Exh.71. The lane referr d to by the plaintiff should lie ~~swartowards~~ towards the northern end of Dyamavva Waddar's house, whereas the lane shown in thesketch Exh.71 lies to the south of her house.

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8. The house shown as Rajappa Ilag-r's in the map Exh.60 and as Hanamantappa Ilager's in the map Exh.77 belonged to the plaintiff's father.In 1905 he sold it to Hanamantappa Ilager by the sale deed Exh.62. Since then the plaintiff resides in another house which is at about 160 feet from the suit site. The plaintiff's said residential house is not shown in any of the maps on record.

9. The house shown as Iravva Sakkasagi's in the map Exh.77 belonged to her uncle Madivalappa Amatyappa.He gifted it to her by the gift deed Exh. 67 in 1919.

10. The house shown as Mahantappa Kori's in the map Exh.77 is the subject matter of the relingquishment deed Exh.84 made by one Irappa Gurusangappa in Mahantappa's favour in 1939.

11. All the above-said three documents Exhs. 62, 67 and 84 contain recitals about the ownership of the open site marked A B C D in the map Exh.60. The sale deed Exh.62 being passed by the plaintiff's father who is dead, is admissible in evidence against him. There is no dispute among the parties that the other two documents namely, the gift deed and relinquishment deed Exhs. 67 and 84, are admissible in evidence They seem to be admissible under section 32(3) of the Indian Evidence Act. See " Mingavva Vs.Sharmappa"(I.L.R.23 Bombay63).

12. The Government claims the whole of the open site A.B C D in the map Exh.60 as of its ownership.The defendant No.4 made the application Exh.70 dated the 14thJanuary 1947 to the Prant Officer for lease of a protion thereof for the purpose of building houses.It was then that the aforesaid sketch Exh.71 was prepared.The sketch shows the portion of the site which the defendant No.4 applied for in his application Exh. 70.The defendant Nos 2 and 3 are the defendant No.4's brothers.The Prant Officer by an order dated the 31st March 1947 granted the three brothers the three plots E F G H, H G J I and I J C K in the map Exh.60. See the three rent notes Exhs. 85,86 and 87.The southern-most

plot I J C K was granted to the defendant No.2, the middle plot H G J I to the defendant No.3 and the northern-most plot E F G H to the defendant No.4. The plaintiff objected to the leases granted to the defendants Nos. 2 to 4, and claimed the whole of the suite A B C D in the map Exh.66 as his. He made the application Exh.64 dated the 5th April 1947 to the Prant Officer asserting his claim to the whole site A B C D. He repeated his claim in the application Exh.65 dated the 23rd April 1947 made by him to the Collector. As a result of these applications made by the plaintiff, it seems, the Government directed that the leases granted to the defendants Nos. 2 to 4 of the aforesaid three plots should be set aside, and that an enquiry should be held under section 37(2) of the Bombay Land Revenue Code as regards the plaintiff's claim to the site A B C D. An enquiry under section 37(2) was accordingly held in 1948. It was for the purpose of that enquiry that the map Exh.66 was prepared. By the order Exh.63 dated the 5th May 1948 the Prant Officer who held the enquiry, rejected the plaintiff's claim to the site A B C D in the map Exh.66, and declared that the three plots E F G H, H G J I and I J C K granted to the defendants Nos. 2 to 4 on leases were of Government's ownership. From that order the plaintiff preferred an appeal to the Collector who dismissed the same by his order Exh. 69 dated the 16th August 1948. It seems that from that order of the Collector the plaintiff preferred a second appeal to the Commissioner, and that the second appeal was pending decision when this suit was instituted on the 30th May 1949. See the Commissioner's letter Exh.68.

12. The plaintiff has brought this suit to challenge the validity of the Prant Officer's aforesaid order Exh.63 and establish his claim to the open site. But the site claimed by him in this suit is much more limited in area than that claimed by him in the enquiry under section 37(2) of the Bombay Land Revenue Code. From the boundaries of the site described in his applications Exhs. 64 and 65 it will appear that in the enquiry under section 37(2) he claimed the whole of the site A B C D in the map Exh. 66 as his. In this suit he claims only the plot A X Y H which measures 45

feet from the east to the west and 68 feet from the north to the south, as I have stated above. It will be seen that the plot I J C K taken by the defendant No.2 on lease from the Government by the rent note Exh. 85 falls out-side the site A X Y M claimed by the plaintiff as his in this suit. It was, therefore, unnecessary to ~~k~~ join the defendant No.2 as a party to this suit. Even the plots E F G H and H G J I taken by the defendants Nos. 3 and 4 on lease from the Government do not whooly fall within the site A X Y M which the plaintiff claims as his; only some portions of the plots taken by the defendants Nos. 3 and 4 on lease are included in the site A X Y M claimed by the plaintiff. I have referred above to the gift deed Exh. 67 made by one Madivalappa in favour of Iravva Rakkasagi whose house is shown in the map Exh. 77. The plaintiff alleges that Madivalappa's father Amatayappa was a distant bhauband of his, that the suit site A X Y M in the map Exh. 66 belonged to their family and that at a partition made between his and Amatyappa's branches of the family about 100 years ago, the suit site A X Y M fell to the share of his branch. He makes this allegation because he wants to rely on some recital in the gift deed Exh. 67 in support of his case. There is, however, no evidence about any partition made between the pla ntiff's branch and Amatyappa's branch. In the gift deed Exh. 67 the house gifted by Madivalappa to Iravva Rakkasagi is stated to be bounded by the house of Gurusangappa Kori Tumbagi on the east, and by the open site belonging to Gurusangappa Kori on the south. The learned pleader for the plaintiff argues that Gurusangappa Kori Tumbagi and Gurusangappa Kori referred to in the gift deed are two different persons, and that whereas Gurusangappa Kori Tumbagi was the owner of the house shown as Mahantappa Kori's in the map Ex. 77, Gurusangappa Kori who is said to have been the owner of the open space on the south was the plaintiff's father. But there is no evidence in support of the argument. If the two Gurusangappas referred to in the gift deed were two different persons they could have been well distinguished from each other by mentioning their fathers' names. Very probably the two

Gurusangappas referred to in the gift deed are the same person. The site A X Y M in the Map Exh.66 which the plaintiff claims as his in this suit, lies to the south of Hanamantappa Ilager's and Iravva Nakkasagi's houses shown in the Map Exh.77. Because it is stated in the gift deed that the open site to the south of Iravva Nakkasagi's house belonged to Gurusangappa Kori, and because the plaintiff's father's name was Gurusangappa Kori, it is argued on the piff's behalf that the said site belongs to him.But in the sale deed Exh. 62 by which the plaintiff's father sold his house to Hanamantappa Ilager, the site to the south of that house is not stated to belong to him. If the suit site which the plaintiff now claims as his had belonged to his father, he would not have failed to make that point clear in the sale deed Exh. 62. In that sale deed it is only stated that the plaintiff's father had a right to discharge water from his bath room and eaves, on the site to the south.It appears that the plaintiff's father claimed only a right of easement to discharge waste water on the suit site and not its ownership. In the relinquishment deed Exh.84 passed by one Irappa in respect of the house shown as Mahantappa Kori's in the map Exh. 77, the open site to the south of that house is said to belong to Govt. The question, therefore, is which of the three documents should be given more importance.The sale deed Exh. 62 and the relinquish--ment deed Exh. 84 which the defendants rely upon were passed in the years 1905 and 1939 respectively.The gift deed Exh. 67 relied upon by the plaintiff was passed in the year 1919. From the recitals in the gift deed Exh. 67 it appears that Madivalappa who executed it was old, blind, deaf, issue-less and miserable in every respect. I am not prepared to attach much importance to the recitals made by him the gift deed as to ownership of the open site to the south.In my opinion the recitals in the sale deed and relinquishment deed Exhs. 62 and 84 are more reliable. The recitals in those two documents show that the suit site A X Y M in the map Exh. 66 did not belong to the plaintiff's family.

13. Two other documents that are relied upon for the plaintiff are the Chardar sketch and the list of house-holders Exhs. 72 and 73 which were prepared in 1857. The list Exh. 73 gives the names of the persons who possessed houses at the suit village Dhavalgi in 1857, and Exh. 72 is a rough sketch showing the relative positions of the houses in the village. It will be remembered that the sketch is not accurate, and not drawn to scale. It is not known for what particular purpose the sketch and the list Exhs. 72 and 73 were prepared. Very probably those documents were prepared for the purpose of ascertaining the houses and buildings that existed in the village. The fact that any open sites in the village are not shown in the sketch, may not be conclusive evidence showing that the open sites did not exist there at the time when the sketch was prepared. The houses Nos. 162, 163, 164, and 165 in the sketch Exh. 72 are respectively the houses shown as Mallivalappaḷori's, Malantaṇa ori's, Iravva Melkasagi's and Ramanantappa Ilager's in the map Exh. 77; and the building No.136 in the sketch is the Lakavenkatesh temple. The list Exh. 73 shows that the house No.172 in the sketch belonged to one Kuluga Shima Koravi and that the houses Nos. 173 and 174 in the sketch belonged to same doctors. A narrow open strip appearing like a lane is shown in the sketch between the houses Nos. 161, 162, 163, 164 and 165 on the north and the houses Nos. 172 and 173 on the south. Instead of that narrow strip, the suit site should have been shown between the houses Nos. 162, 163, 164 and 165 on the north and the house No.172 on the south. But no such open site is shown there. For the defendants it is urged that the fact that no open site is shown in the sketch is not material, and does not establish that there was no open site belonging to Government there, because the sketch is not an accurate and detailed map of the village. There seems to be much force in this argument. For the plaintiff it is contended that the suit site A X Y H in the map Exhibit No. 60 is included in the rectangles marked Nos. 164 and 165 in the

sketch Exh. 72, that the site X D L Y in the map Exh 66 is included in the rectangles marked Nos. 162 and 163 in the sketch, and that the site H L C D is the rectangle marked No.172 in the sketch.But the plaintiff's contention does not seem to be sound. For, the house No.164 in the sketch belonged formerly to Amtyappa whose son Madivalappa gifted it to Iravva Makkanagi by the gift deed Exh. 67, and the house No.165 in the sketch is the house which the plaintiff's father sold to Hanmanta pa Ilager by the sale deed Exh. 62. If the plaintiff's contention were correct, the sketch shows that a part of the suit site A H Y M in the ~~xx~~ map Exh. 66 belonged to Amtyappa, and a part thereof to the plaintiff's father. But the plaintiff's case is that at a partition made about 100 years ago, i.e. long before 1927, the whole suit site A X Y H had fallen to his father's share. If the plaintiff's case were true, the whole of the suit site A X Y H should have been included in the rectangle marked No.165 in the sketch.If the argument advanced on the plaintiff's behalf is to be believed, the sketch would show that the suit site A X Y H had been divided between the plaintiff's father and Amtyappa, and that they were in separate possession of their respective portions thereof.The plaintiff's case is that Huluga Ehima Koravi's house No. 172 in the sketch stood on the site H L C D in the map Exh.66. Witness Lagappa Yellappa Exh. 78 who resides at Kallur professes to be the grand-son of the said Huluga Ehima. He says that till about 10 years ago he resided in the house inherited by him from his grand father Huluga Ehima at Dhavalgi, that he migrated to Kallurabout the year 1940, and that his said house at Dhavalgi fell down and perished about the year 1945 or 1946. Some remnant of an embankment marked W1 W2 W3 is shown in the Commissioner's map Exh. 77. That remnant would lie on the site marked H L C D in the map Exh. 66. The plaintiff's case is that the remnant is the foundation of Huluga Ehima 's house which is marked No.172 in the sketch Exh.72. But his witness Lagappa Yellappa Exh.78 says that the house which he inherited from Huluga Ehima stood on the plot E F G H which is now taken on

lease by the defendant No.4 from Government, and that when in the course of the enquiry under Section 37(2) of the Bombay Land Revenue Code the Prant Officer dug on that plot, the founda-tion of that house was not found there. The witness says that all the three plots E.F.G L, H G J I and I.J C K in the map Ex. 66 which are now acquired by the defendants Nos. 2 to 4 are included in the premises which belonged to his grand-father Hulga Bhima. In other words he claims a part of the suit site A X Y M in the map Exh. 66 as his. The said claim is quite inconsistent with the claim made by the plaintiff to the suit site A X Y M. The evidence of Basappa Yellappa Exh. 78 does not at all seem to be reliable. I do not believe that he is the grand-son of Hulgua Bhima, or that he has anything to do with the site A B C D in the map Exh. 66 or any part thereof. Though the Plaintiff now says that the plot M L C D in the map Ex. 66 belonged to Huluga Bhima Koravi, in the applications Exhs. 64 and 65 which he had made to the revenue authorities he had claimed the whole site A B C D including the plot M L C D to be his.

14. The remant of an embankment marked w1 w2 w3 and the southern pit marked P2in the Commissioner's map Exh. 77 lie on the plot M L C D in the map Exh. 66, out side the suit site A X Y M which the plaintiff now claims to be his. The plaintiff does not say by whom and when the pit p2 in the map Ex. 77 was dug. As stated above the plaintiff's case is that the remant w1 w2 w3 in the map Exh. 77 is the foundation of the house which belonged to Huluga Bhima Koravi. The defendants suggest that the pit p2 was dug by the villagers for the pirpose of some dramatic performances and that the remant w1 w2 w3 in that map is the remant of either the stage prepared for the dramatic performances or the bund constructed to protect the pit from being filled up. Their witnesses Gangappa Shivappa and Shivappa Guru Basappa Exhs. 83 and 95 corroborate them on the point. I am inclined to believe the defendants' theory about the pit P2 and the remant of the embankment w1 w2 w3 in the Commissio-er's map Exh. 77.

15. The Plaintiff alleges that he and his ancestors have

been long in possession of the suit site A X Y H in the map Exh. 66, and using it for the purpose of tethering cattle, stacking cotton plants and sotring manure. He has led no evidence in support of the allegation. The allegation does not seem to be probable because his residential house is, as I have stated above, situate at a distance of 180 feet from the suit site, and possesses a cattle shed and an open spare for the purpose of storing manure and fuel. The plaintiff says that he tethers his cattle under the Tamarind tree marked T1 in the Commissioner's map Exh. 77. That tree stands on the plot marked X B L Y in the map Exh. 66. In his former appli-cations Exhs. 64 and 65 the plaintiff had claimed that plot X B L Y ot be his. But in this suit he does not claim the plot X B L Y as his, and says that he does not know to whom it belongs. I do not believe that the plaintiff ever tethered his cattle under the said Tamarind tree. Even if he tethered his cattle there some time, that fact would only show that he some times used the plot X B L Y in the map Exh. 66. It would not establish his user and possession of the suit site A X Y H in that map. The northern pit P1 shown in the Commissioner's map Exh. 77 stands on the suit site marked A X Y H in the map Exh. 66 The pla ntiff says that he dug that pit P1 to store manure. The defendant No.4 says in his deposition before the Court that he dug that pit after he took the plot E F G H in the map Exh. 66 on lease from Government. In his cross-examination it is taken out from him that in his written statement he has stated that the plantiff dug the pit for the purpose of evidence. But I find no reference to any pit in his written statement Exh. 17. The defendants' witness Shivappa Gurubasappa Exh. 95 officiated as Patil of the suit village Dhavalgi from 1943 to 1948. He says that the said pit P1 came into existence in 1947 just before the defendants Nos. 2 to 4 required the plots E F G H, H G J I and I J C K on lease from Government, and that he does not know who dug the same. The defendants Nos. 2 to 4 took the plots on lease from Government by the rent notes Exhs. 85 to 87 on the 26th April 1947. In April 1947, after the dispute about the suit site

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had started, the plaintiff might have dug the pit in order to creat evidence of his title thereto. Thedefendant's case is that the plaintiff and his ancestors were never in possession of the suit site. In support of their case they have examined the aforesaid witness Shivappa Gurubasappa Exh. 95 and also Sangappa Shivappa Exh. 83 who resides in the neighbouring house situate to the north of Shivappa Doddannavar's in the map Exh. 66. Both the witnesses fully corroborate the defendants, and say that the open site A B C D in the map Exh. 66 belongs to Government, and that the defendants Nos. 2 to 4 are now in possession of the three plots taken by them on lease from Government. I do not believe that the plaintiff and his ancestors were ever in possession of the suit site. I do not believe that the plaintiff ever tethered cattle or stored manure and fuel on the suit site before the dispute as to the title thereto started. Assuming that the plaintiff some time tethered his cattle or stored manure there, such acts do not constitute possession and user of the site. A man may keep fodder or tether his cattle on an open site for reasons of convenience, not intending to exclude others from the use of the site, without objection from his neighbours or interference from the state. Such acts of user do not constitute possession. Acts such as erecting a permanent structure or putting up a substantial hedge which indicate an intention to exclude the user and control of others, may establish one's possessio. The plaintiff did not perform any such acts on the suit site.

16. It has been held in " Vasta Vs. Secretary of State for India " (I.L.R. 45 Bombay 739) that a presumption arises under Section 37 of the Bombay Land Revenue Code that the title to unoccupied sites in the Gaothan vests in the Government. On a careful examination of all the evidence on record and in the light of the said presumption under Section 37 of the Bombay Land Revenue Code, I hold that the Government is the owner of the whole site A B C D in the map Exh. 66 and that the plaintiff has no title to any part

thereof. In pursuance of the order made by the Prant Officer dated the 31st March 1947 the defendants Nos. 2 to 4 passed the rent notes Exhs. 85 to 87 dated the 26th April 1947 in favour of the Government. I think that those defendants got possession of the plots taken by them on lease when they passed the rent notes i.e. on the 26th April 1947. Subsequently the Government set-aside the Prant Officer's said order dated the 31st March 1947 and ordered an enquiry to be held under Section 37 (2) of the Bombay Land Revenue Code. For the Plaintiff it is urged that it should be deemed that the defendants Nos. 2 to 4 lost possession of the plots leased to them when the Government set aside the Prant Officer's aforesaid order dated the 31st March 1947. I do not think that the plaintiff's contention in that respect is correct. For even after the Prant Officer's said order was set aside Government accepted rent from the defendants Nos. 2 to 4 in respect of the said plots. Vide the rent receipts Exhs. 88 to 93. After holding the enquiry under Section 37 (2) of the Bombay Land Revenue Code as directed by the Government, the Prant Officer, by his order dated the 5th May 1948 decided that the plaintiff had no title to the suit site, and that it belonged to Government. It is after that order was passed that this suit was instituted in May 1949. I hold that the plaintiff was not in posse--ssion of the suit site at the time of the institution of this suit, and that the defendants Nos. 2 to 4 were then in possession of the respective plots taken by them on lease from the Government.

17. In view of the above findings it is not necessary to give any finding on Issue No. 5 in this case. The burden of proof in respect of that issue lies on the defendants Nos. 2 to 4. They have not led sufficient evidence to discharge the burden of proof in that respect.

18. Section 11 of the Bombay Revenue Jurisdiction Act provides that no Civil Court shall entertain any suit against the State on account of any act or omission of any revenue officer, unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals, as lie within the period of limitation

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allowed for bringing such suit, it was possible to present. From the order Exh. 68 which the Prant Officer made under Sectio 37 (2) of the Bombay Land Revenue Code in this case the Plaintif preferred an appeal to the Collector who by his order Exh. 69 dismissed the appeal. The defendants suggest that the plaintiff preferred no appeal to the Commissioner from the Collector's said order Exh. 69, and that therefore this suit is barred under Section 11 of the Bombay Revenue Jurisdiction Act. But the Commissioner's letter Exh. 58 shows that the plaintiff did prefer an appeal to him from the Collector's order and that the appeal was pending when this suit was instituted. I, therefore, answer Issue No.4 in the negative.

19. In the result the plaintiff's suit fails and will be dismissed with costs.

20. O R D E R.

The Plaintiff's suit is dismissed.
The Plaintiff to pay the defendants' costs and bear his own. Two seperate sets of pleaders' fees are allowed to the defendants--- one to the defendant No.1, and the other to the defendants Nos. 2 to 4 together.

Dated the 26th February 1951.

Sd/ N.M. Hadkarni.
Civil-Judge, Senior Division,
Bijapur.

"True Copy"

By
Bijapur

3547

Suits.
Bijapur.
For a declaration that the open site situated in the village Dhavalgi near the Muddebihal Bagewadi Road and measuring 32 X 50 cubits is of the plaintiff's ownership and for a consequential injunction.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4741
Bombay Castle, 24 March 1951.

Read Government Resolution, Legal Department No. 12613, dated the 8th November 1949.

Endorsement from the District Government Pleader, Bijapur, No. 146, dated the 28th February 1951, forwarding uncertified copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on 26th February 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Bijapur.	
Civil Suit No. 192 of 1949.	
Mukkanna Gurbasappa Kori ..... Plaintiff;	
vs.	
The Province of Bombay ..... Defendant.	

The Plaintiff's suit is dismissed.

The Plaintiff to pay the defendants' costs and bear his own. Two separate sets of pleaders' fees are allowed to the defendants --- one to the defendant No. 1, and the other to the defendants Nos. 2 to 4 together.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

original

E.P. Bhamgara
Additional Assistant Secretary to Government.

Issued Line
To 24/3

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Subh for copy
19/3

HSP
14/3

C. P. C. Schedule 1, Appendix D, No. 1.]

Civ. A 37/k. .37 .67

ಮೂಲ ದಾವೆಯಲ್ಲಿ
ಪ್ರ ಕು ಮು ನಾ ಪೆ
(ಅ ೨೦, ಕಾ. ೬, ೭).

(ಫಾರ್ಮ ನಂಬರು ೧,
ಪರಿಶಿಷ್ಟ ಡ, ಶಿಡ್ಯೂಲ ೧.]

ಹುಕುಮುನಾಮೆ

ನಿ॥
ಎಲಾಯಿಸ್ — ದ ಹಿಂಪ್ಲಿಸ್ — ಸಿ.ದಿ. ಜಜ್ಜ್ ಕೋರ್ಟ್ ನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಎಲಿಕಾಪ್ಟರ್ ಇಲ್ಲಿ

ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು 192 ಸನ್ 1964 ಸ್ಟೈಕಿ

(೧) ಮುಕ್ಕಣ್ಣಾ ಗುರವೇಂಗಪ್ಪಾ ಕೋಮಿ, ವಯ॥, ಕು॥ ಸ್ವೈಕ್ ವಿಗ ಧಲವಣ್ಣಿ ಎತಾ ಗಂ ಮುಲ್ಕಿದೀಲುದಾರ್. } ವಾದಿ.

ವಿರುದ್ಧ

(೨) ಡಿ ಎಲ್ಲಪ್ಪನವರ ಊಫ್ ಬಾಂಬೆ.
(೩) ಮುಲ್ಕಾರ ವಯಸ್ಸು ಕೆಲಸ } ಮೂಲೋಲಪೆ ಕಾವಲುಕಾರ
(೪) ಶೆಲಾಪಟೆ. ಸ್ಥಳ } ಕು॥ ಪ್ಲಾಟಿಸ್ ವಿಗ
(೫) ಪಾಸೇಲಂಥ್ರ ತಲ } ಧಲವಣ್ಣಿ ಎತಾ ಮುಲ್ಕಿದೀಲುದಾರ್. } ಪ್ರತಿವಾದಿಯರು

ಫಿ. ದಾಖಲ ತಾರೀಖು 30 ತಿಂಗಳು 5 ಸನ್ 1964

ಫಿ. ಫೈಲ ತಾರೀಖು 13 ತಿಂಗಳು 6 ಸನ್ 1964

ದಾವ ರೂಪಾಯಿ 5-೦-೦

ವಾದಿಯ ದಾವೆ ಹೀಗೆ ಅದಲ್ಲ— ಡಿಫ ಎಲಾಯಿಸ್ ನಂ ಡಿಫ ಮುಲ್ಕಿದೀಲುದಾರ್ ಮಲ್ಲಿ ಸ್ಟೈಕಿ ಮೋದೆ ಧಲವಣ್ಣಿ ಕ್ರಮದಲ್ಲಿ ಎಂದಿಯ ಬೆಲೆಲಬಾಗಾ ಇರುತ್ತದೆ. ಅತಿ ಪ್ರಮುಖ ಮುಳ್ಳು ಮುತ್ತಿದೆ ಲಾ॥ದಿ॥ ಮುಳ್ಳಾ ಇರುತ್ತದೆ.. ಅವರ ಚಕಬಂದಿ ಪ್ರೊಟೆಕ್ಷನ್ ಬೆಲೆಲಬಾಗಾ ಮೆ॥ಳ್ಳ ರಕ್ಷಣೆ ಊರುತ್ತೆ ಎಂದಿಯ ಅವರ ಭೂಪ್ರಬಂಧ ಮನೆಗಳ್ಳು. ಈಗ ಮಾಡಬೇಕಾದ ಕಬಜಾದಲ್ಲಿ ಇದ್ದದ್ದು (ಪಣಮೂಲ ಪ್ರಾ ಈ ಧಲವಣ್ಣಿ ಎ ಊರಲ್ಲಾ ರಕ್ಷಣೆ ಮಾಡಿ) ಮೆ॥ಳ್ಳ ಪಾಠ (tone) ಮಾಡಿ ಬಾಣೆಯು ಬಯಲುಕಾಂ ವಿಂದ ಎಂದಿಯ 'ಎ ಎ ಡಿಯರ್ ಪ್ರೊಟೆಕ್ಷನ್ ಎಂ ಎಕಿಯಾಬೇಕಲ್ಲಿ ಇರುತ್ತದೆ.

(೨) ೪ನೇ ಪ್ರತಿವಾದಿಯು ಕಾಂಸ್ಟೇಬಲ್ ಕೂಲಿ ಕೆಲಸದವನು ಇದ್ದು 1962ರಿಂದ ಇಪ್ಪತ್ತಿಲು ಕಾಂಸ್ಟೇಬಲ್ ಚಳವಳ್ಳಿಯಲ್ಲಿ ಶಿಪ್ಪಾಯಿ ಆಡಚಾನು ಇರುತ್ತಾನೆ. ಅವನು ಎಂ 13 ಪ್ರತಿವಾದಿಯರು ದಾವಾಗ ಬಾಣೆಯನ್ನು ಮುತ್ತಿ ಅವರ ಮನೆಗಳಿಗೆ ಇಲ್ಲಾ ಬಾಣೆಯು ನಿಲಕಾಗದ್ದು ಇದು ಅದನ್ನು (Notional occupancy) ಕಬ್ಜೆಕ್ಕೆ ತಗೆದು ಕೊಂಡು ಎಲ್ಲಿ ಕೊಡಬೇಕೆಂಬ ಕಿಟ್ಟಿನ್ನು ಅಮೂಲದಾರ ಕಡಿಗೆ ಅರ್ಜಿ ಕೊಟ್ಟಿದ್ದರು. ಎಂದರೆ ಕಿಟ್ಟಿನ್ನು ಅಮೂಲದಾರು ಎಂದಿಯ ವಿಚಾರಣೆ ಎ ಲಾಗಡ ಆಲಾವನ್ನು ಮಾಡದೆ ಮುತ್ತು ಪಂಚನಾಮೆ ಮಾಡದೆ ಎಂದಿಂದ ೪ ಪ್ರತಿವಾದಿಯರಿಗೆ ಕೊಡಬೇಕೆಂದು ತೀರ್ಪಾರನ್ನು ಮಾಡಿದರು. ಕಡಿಗೆ ಇವರು ಪ್ರತಿವಾದಿಯರು ಬಾಣೆಯನ್ನು ಕಿಟ್ಟಿಸಿಕೊಂಡ ದಿನಾಂಕದಿಂದ ೩ ಪ್ರತಿವಾದಿಯರು ಕಡಿಂದ occupancy Price ಬಾಡಿಗೆ ತಗೊಂಡು ಮುತ್ತು ಬೂಬಾಡಿಸಿ ಕೆಲ್ಸ ಎ ಆಲಾವ ತಗೊಂಡು ಇಲ್ಲಾ ಬಾಣೆಯನ್ನು ಕೊಡಬೇಕೆಂದು

చేస్తే Regulation I of 1908 లేదా M.L.B.P 526 లేదా 31-3-48 వెబ్సైట్లలో చూడవచ్చు. పట్టా-బాకీదారుల్లో దాఖలైన బాకీయు నిర్ణయించే విధానమును తెలుపుతుంది.

(3) పట్టా-చుక్కలుగా ఉన్నవారి మధ్యలో ఒకరి తరువాత ఒకరి పేర్లు వరుసగా వ్రాసి ఉండవచ్చు. అలా వ్రాసిన పేర్లలో ఒకరు లేదా ఇద్దరు మరణించినట్లయితే వారి పేర్లు కొట్టివేయడం జరుగుతుంది. ఇలా చేయడానికి వీలుకాని పరిస్థితులలో మరణించిన వారి పేర్లు కొట్టివేయకుండా అలాగే ఉంచడం జరుగుతుంది. ఇలా చేయడం వల్ల ఎవరి వాటా ఎంత అనే విషయం తెలుసుకోవడానికి ఇబ్బంది కలుగుతుంది.

(4) ఒకరి పేరు మీద ఉన్న పట్టా-బాకీదారుల్లో ఒకరు లేదా ఇద్దరు మరణించినట్లయితే వారి పేర్లు కొట్టివేయడం జరుగుతుంది. ఇలా చేయడానికి వీలుకాని పరిస్థితులలో మరణించిన వారి పేర్లు అలాగే ఉంచడం జరుగుతుంది. ఇలా చేయడం వల్ల ఎవరి వాటా ఎంత అనే విషయం తెలుసుకోవడానికి ఇబ్బంది కలుగుతుంది.

(5) ఒకరి పేరు మీద ఉన్న పట్టా-బాకీదారులు మరణించినట్లయితే వారి పేర్లు కొట్టివేయడం జరుగుతుంది. ఇలా చేయడానికి వీలుకాని పరిస్థితులలో మరణించిన వారి పేర్లు అలాగే ఉంచడం జరుగుతుంది. ఇలా చేయడం వల్ల ఎవరి వాటా ఎంత అనే విషయం తెలుసుకోవడానికి ఇబ్బంది కలుగుతుంది.

(6) పట్టా-బాకీదారులు మరణించినట్లయితే వారి పేర్లు కొట్టివేయడం జరుగుతుంది. ఇలా చేయడానికి వీలుకాని పరిస్థితులలో మరణించిన వారి పేర్లు అలాగే ఉంచడం జరుగుతుంది. ఇలా చేయడం వల్ల ఎవరి వాటా ఎంత అనే విషయం తెలుసుకోవడానికి ఇబ్బంది కలుగుతుంది.

(7) పట్టా-బాకీదారులు మరణించినట్లయితే వారి పేర్లు కొట్టివేయడం జరుగుతుంది. ఇలా చేయడానికి వీలుకాని పరిస్థితులలో మరణించిన వారి పేర్లు అలాగే ఉంచడం జరుగుతుంది. ఇలా చేయడం వల్ల ఎవరి వాటా ఎంత అనే విషయం తెలుసుకోవడానికి ఇబ్బంది కలుగుతుంది.

(8) పట్టా-బాకీదారులు మరణించినట్లయితే వారి పేర్లు కొట్టివేయడం జరుగుతుంది. ఇలా చేయడానికి వీలుకాని పరిస్థితులలో మరణించిన వారి పేర్లు అలాగే ఉంచడం జరుగుతుంది. ఇలా చేయడం వల్ల ఎవరి వాటా ఎంత అనే విషయం తెలుసుకోవడానికి ఇబ్బంది కలుగుతుంది.

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ಈ ದಾವೆಯು ಇವರ ಮುಂದೆ, ವಾದಿಯ ತರ್ಫಿನಲ್ಲಿ

ಈ ಹೊತ್ತು ಕೊನೆಯ ನಿಕಾಲೆಗೆ ಇವರ ಮತ್ತು ಪ್ರತಿವಾದಿಯ-ತರ್ಫಿನಲ್ಲಿ

ಇವರ ಸಮಕ್ಷಮದಲ್ಲಿ ಬಂದದರಿಂದ ಹುಕುಮುನಾಮೆ ಮಾಡಿದೆ. ಫರ್ಮಾಯಿಸುವದೇನಂದರೆ :—

(ಎ) ಈ ಹುಕುಮನ್ನ ಮುಟ್ಟಿಸಿ ಮೇಲೆ ಬರೆದ ವ್ಯಾಜ್ಯದಲ್ಲಿ ಕಾಣಿಸಿರುವ ಆರ್ಡರ VII ರೂಲ್ 5 ಮತ್ತು 6 ಪ್ರಕಾರ ಮೇಲಿಂದ ಹಿಂದಕ್ಕೆ ಬರಬೇಕಾದ ವ್ಯಕ್ತಿ ಮಾಡಿಯವರು ವಾದಿಯು ತಕ್ಕಷ್ಟನ್ನ ಒಕ್ಕಲುಬಾಕಿ ಮತ್ತು ಒಕ್ಕಲುಬಾಕಿ ಸರಕತ್ತಿಗೆ ಬರಬೇಕಾದ ಮುದ್ದತ್ತಿನ ರುಸುವತ್ತಿಗೆ ಕೊಡಬೇಕಾದ ಭೂಕಂದಾಯ ಬಿಟ್ಟಿನ್ನ.

(ಬಿ) ದಾವೆಯ ಕಾರಣ :— ಪ್ರ 5-5-48 ನೇ ದಿವಸ ನಿನ್ನೆ ಮುಟ್ಟಿಸಿ ಮುಂದೆ ಬರೆದ ಕಳೆದ ವಿರೋಧಿಯವರು ವಾದಿಯು ತಕ್ಕಷ್ಟಾಕ್ಕೆ ಬರಬೇಕಾದ ಹಣವನ್ನು, ಅಲ್ಲದೆ ದಿವಸನಕ್ಕೆ ಉಂಬಾಯಿತು. ಮುಟ್ಟಿಸಿ ಪ್ರ 31-3-47 ನೇ ದಿವಸದವರೆಗೆ ಕಾಲ್ಕ್ರಿಕಾ ಉಂಬಾಯಿತು.

(ಸಿ) ದಾವೆಯ ಅವಶ್ಯಕತೆ: ಸದರಿ ದಾವೆಯು Declaration and Consequential ಬಗ್ಗೆ ಇದ್ದು ಅದಕ್ಕೆ ಅವಶ್ಯವಾದ ಸರ್ಟಿಫಿಕೇಟ್ ಮಾಡಿದೆ. ಅನೇಕಾಯಿಯವರಿಗೆ 9-4-0 ಅಂತೆ ರೂ 6-4-0 ಕೋರ್ಟ್ ಫೀ ಕೊಟ್ಟಿದೆ. ಆ ಬಗೆಯ ಫೀಲುಗಳ ಆ ಕೋರ್ಟಿನ ಅಧಿಕಾರದ ಬಗ್ಗೆ ದಾವೆಯ ಅವಶ್ಯಕತೆ ಸರ್ಟಿಫಿಕೇಟ್ ಸರಿಯಾಗಿರುತ್ತದೆ.

(ಡಿ) C.P.C ಆಕ್ಟ್ ೫೦ ನೇ ಪ್ರಕಾರ ಪ್ರ 1-2-1949 ನೇ ದಿವಸ ನೋಟೀಸು ಕಳಿಸಿದ್ದರಿಂದ ಕಾಲಕ್ಕಿಂತ ಮೊದಲೇ ಈ ದಾವೆ ಕೊಟ್ಟಿರುತ್ತದೆ. ಆ ನೋಟೀಸು ಪ್ರ 2-2-49 ನೇ ದಿವಸ ಅವರಿಗೆ ಮುಟ್ಟಿರುತ್ತದೆ.

(ಇ) ಆದೇಶವು ಏನಂದರೆ :—(ಅ) ದಾವೆಯ ಪ್ರಕಾರ ವಾದಿಯು ಮೂರನೆಯ ಅಂತೆ ಕೊಡಬೇಕಾದ ಹಣವನ್ನು ಕೊಡಬೇಕು. (ಬಿ) ಪ್ರತಿವಾದಿಯವರು ವಾದಿಯು ತಕ್ಕಷ್ಟನ್ನ ಒಕ್ಕಲುಬಾಕಿ ಮತ್ತು ಸರಕತ್ತಿಗೆ ಬರಬೇಕಾದ ಮುದ್ದತ್ತಿನ ರುಸುವತ್ತಿಗೆ ಕೊಡಬಾರದೆಂದು ಶಾಶ್ವತ ತಾಕೀದಿ ಆಗಬೇಕು. (ಸಿ) ದಾವಾದ ಖರ್ಚು ಕೊಡಬೇಕು. (ಡಿ) ಕೋರ್ಟಿನ ಯೋಚ್ಯೆ ಕಂಡ ಇತರ ದಾದು ಕೊಡಬೇಕು.

ಈ ದಾವೆಯು ಶ್ರೀ M.M. ನಾಡಕರಣಿ ಪ್ಲೀಡರವರಿಗೆ ಕೊಟ್ಟಿಲಾ ಉಳ್ಳು ಕೊಂಡು ಈತನ್ನು ಪ್ರ 9-3-49 ನೇ ದಿವಸ ಕೋರ್ಟಿನ ಸಮಕ್ಷ ಇರಲು ಮುಂದೆ ವಾದಿಯ ಪ್ಲೀಡರ್ ಶ್ರೀ R.S. ಅಂಬಿಕೇರ ಇವರು ಮುಟ್ಟಿ ಪ್ರತಿವಾದಿಯವರ ವಕೀಲರಲ್ಲಿ ನನ್ನ ಪ್ರತಿವಾದಿ ಶ್ರೀ K.R.Rao. ಎಂಬವರ ಪ್ರತಿವಾದಿಯ ಶ್ರೀ C.L.Kanabur ಇವರ ವಿಷಯದಲ್ಲಿ ಬಂದದರಿಂದ ಹುಕುಮು ಮಾಡಿದೆ ಫೈಸಲಾಮಾಡಿ ಏನಂದರೆ —

ವಾದಿಯು ದಾವೆಯು ರದ್ದು ಪಡಿಸಿದೆ. ವಾದಿಯು ಪ್ರತಿವಾದಿಯವರಿಗೆ ಖರ್ಚುದಿವ್ಯ ಕೊಡಬೇಕಾದ. ಮುಟ್ಟಿಸಿ ಇನ್ನು ದಾವೆ ವಿಚಾರಿಸಬೇಕು. ಪ್ರತಿವಾದಿಯವರಿಗೆ ಒಕ್ಕಲು ಫೀಲು ಚೀಟಿ ಚೀಟಿ ಮಾಡಿ ಕೊಟ್ಟಿನ್ನಳಿಗಿಂತ ಕೊಡಿಸಿದೆ. ಮೊದಲನೆಯದ್ದು ನನ್ನ ಪ್ರತಿವಾದಿಗೆ ಎರಡನ್ನು ಉಳಿದ ನಿಂದ ೪ ನೇ ಪ್ರತಿವಾದಿಯವರಿಗೆ —

ಮತ್ತು ಈ ದಾವೆಯ ವೆಚ್ಚದ ಬಗ್ಗೆ ರೂಪಾಯಿಗಳ ರಕಮನ್ನು
ಇವನು ಇವನಿಗೆ ವರ್ಷಕ್ಕೆ
ಶೇ ರಂತೆ ಈ ತಾರೀಖಿನಿಂದ ಹಣವನ್ನು ಕೊಡುವ ತಾರೀಖಿನ ವರೆಗೆ ಆಗುವ ಅದರ ಮೇಲಿನ ಬಡ್ಡಿಯ ಸಹಿತ ತೆರಬೇಕು.

ವೆಚ್ಚದ ಯಾದಿಯು

ವಾದಿಗೆ ಆದ ವೆಚ್ಚ.				೧ನೇ ಪ್ರತಿವಾದಿಗೆ ಆದ ವೆಚ್ಚ.			
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ	ಪೈ
೧. ಅಸಲರ್ಜಿಗೆ ಸ್ಟಾಂಪು	6	4	-	೧. ವಜಾಬಾಕಿಯ ಅಥವಾ ವಿರುದ್ಧ ದಾವೆಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು.	-	-	-
೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ಸದರ	-	10	-	೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ಸದರ	-	-	-
೩. ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ)ಗಳಿಗೆಸದರ.... ಒಟ್ಟು ಮುಂದಿನ ಪೈಸಿನ ಮೇಲೆಕೊಟ್ಟದ್ದು.	6	4	-	೩. ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳಿಗೆ ಸದರ ಒಟ್ಟು ಮುಂದಿನ ಪೈಸಿನ ಮೇಲೆ ಕೊಟ್ಟದ್ದು.	2	8	- 0
೪. ಸಾಕ್ಷೀದಾರರ ಹೊಟ್ಟೀವೆಚ್ಚ	118	8	- 0	೪. ಸಾಕ್ಷೀದಾರರ ಹೊಟ್ಟೀವೆಚ್ಚ			
೫. ದಾವೆ ಮೊರಕಮಿನ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ....				೫. ಪ್ಲೀಡರನ ಫೀ			
ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ....	15	-	-	ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ....	15	-	-
೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	13	8	-	೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	-	-	-
೭. ಕಮಿಶನರನ ಫೀ	30	-	-	೭. ಕಮಿಶನರನ ಫೀ	-	-	-
೮. ಭಾಷಾಂತರದ ಫೀ	-	-	-	೮. ಭಾಷಾಂತರದ ಫೀ	-	-	-
೯. ನಕಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ	-	-	-	೯. ನಕಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ	2	8	-
೧೦. ತಹಕೂಬಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟದ್ದು	-	-	-	೧೦. ತಹಕೂಬಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟದ್ದು			
೧೧. ವಾರಸದಾರರನ್ನು ಬದಲಾಯಿಸುವ ಬಗ್ಗೆ ಮಾಡತಕ್ಕ ಅರ್ಜಿಯ ಮೇಲೆ ಸ್ಟಾಂಪು.	-	-	-				
ಒಟ್ಟು	190	2	- 0	ಒಟ್ಟು	20	-	-
ನಾಮಂಜೂರಾದ ಖರ್ಚು				ನಾಮಂಜೂರಾದ ಖರ್ಚು			
ಅಸಲರ್ಜಿಯ ಮೇಲೆ				ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ			
ಪ್ಲೀಡರನ ಫೀಯ ಮೇಲೆ				ಪ್ಲೀಡರನ ಫೀಯ ಮೇಲೆ			
ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ				ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ			
ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ.)	6	4	-	ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ).	2	8	- 0
ಬಾಕಿ	183	4	- 0	ಬಾಕಿ	17	8	- 0

ಈ ಹೊತ್ತು ಸನ್ ೧೯೫೦ನೇ ಇಸವಿಯ ಫೆಬ್ರವರಿ ತಿಂಗಳ 9 ನೇ ತಾರೀಖಿನಲ್ಲಿ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೋಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

Sd/— P.M. Akbal
ಕಾರಕೂನ.

ವಾದಿಯ ಪ್ಲೀಡರ— Sd/ R.S. Angolekar

ಪ್ರತಿವಾದಿಯ ಪ್ಲೀಡರ— Sd/ K.A. Rao
Sd/ G.L. Kanabur

Sd/ M.M. Nadkarni
Civil Judge Sr. Dn.
10.3.1951

ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲಾ ಅವರು ತಾವು ಹಾಜರ ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು, ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ ನಾಶಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶಮಾಡುವದರಲ್ಲಿ ಬರುವವು).

417.

ವಾದಿಯ ಕಡೆಯಿಂದ.			ವಿರುದ್ಧವಾದಿಪ್ರತಿವಾದಿಯ ಕಡೆಯಿಂದ		
	ರೂ.	ಆ. ಪೈ		ರೂ.	ಆ. ಪೈ
ಮಂಜೂರಾದ ಖರ್ಚು			ಮಂಜೂರಾದ ಖರ್ಚು		
ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ನಂಬರು—			ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ನಂಬರು—		
				-	10
				5	-
				6	-
				15	-
				2	8
				29	2
				5	-
				24	2
ನಾಮಂಜೂರಾದ ಖರ್ಚು			ನಾಮಂಜೂರಾದ ಖರ್ಚು		
ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ನಂಬರು—			ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ನಂಬರು—		
ಒಟ್ಟು			ಒಟ್ಟು		

72.

2/50

Presented on 29-3-1951.
Sd.M.K.Deshpande.
C.O.C.

Ex.No.1.

Regular appeal No.153 of 1951.

In the Court of the District Judge,

Bijapur.

1.Mukkanna Gursangappa Kori
age 50, agriculture, of
Dhavalagi, taluka Muddebihal. appellant.
-orig.Plff.

Vs.

1. The Province of Bombay.
2. Malhar, age 45 } Maloji
3. Shivaji " 40 } Kapatkar of
4. Nagendra " 28 } Dhavalagi,
Taluka Muddebihal. respondents
(orig: defts).

Claim Rs.50/- jurisdiction for the same.

The appellant abovenamed being aggrieved by the decree dated 26-2-1951 passed by the Civil Judge, Senior Division, Bijapur, in Civil Suit No.192 of 1949, begs to prefer an appeal against the same on the following among other grounds of objection, viz:-

1. The finding of the lower court on issues Nos. 1 and 2 is wrong.

2. The learned Judge has failed to approach the case from a correct stand-point.

3. It is wrong to say that plff claimed the whole plot A B C D by his application Exs. 64 and 65. He has only wrongly described the boundaries there.

4. The gift deed Ex.67 is a complete answer

to the defts' case regarding the title of the suit site.

5. The two Gursangappas in Ex.67 are in fact distinguished - one is of Tumbagi and the other is plaintiff's father.

6. Even assuming that the two Gursangappas are one and the same; it does not at all advance the case of the defts viz: that the suit site belongs to Government.

7. It is nobody's case that the suit site belonged to some Gursangappa other than plff's father.

8. In Ex.62, the southern boundary of the house sold is described as ' open site'; it is not inconsistent with plff's ownership.

9. Ex. 84 is very recent and has no evidentiary value; it was challenged soon after by the executants as would be seen from the cross--examination of the attesting witness.

10. Exs. 72 and 73 completely establish the case of the plaintiff.

11. It should have been held that the suit site extended to the south upto the lane leading to Dyamava's house shown in Ex.72.

12. No open site is shown in Ex.72 to the right of the Muddebihal road- whereas to the west of that road, several such sites are shown; the omission cannot have been accidental.

13. The marks of foundations of house walls in

one of three plots in suit negatives the case of the Government that the whole site belonged to them.

14. Even the defts Nos. 2 ~~and~~ to 4 have admitted in their written objection to plff's application for temporary injunction that pit No.1 was dug by the plff; in fact, deft No.4 has admitted this in his cross-examination.

15. It is absolutely incorrect to say that defts got possession of the plots in pursuance of Exs 85 to 87. There is not an iota of documentary evidence regarding that. There is no panchanam, no Kabja-Pavati, no report by the village officers or Circle Inspector to the Mamlatdar or Prant Officer that possession was delivered. This part of the story is absolutely false.

16. The decree is contrary to law, evidence and probabilities.

It is therefore prayed that in view of the grounds set forth above, the Court be pleased to set aside the decree of the lower court, allow the appeal and decree the plff's suit with costs throughout.

27-3-1951.
29

Sd.R.S.Ambekar.
Pleader for the appellant.

" True Copy "

~~Shiristedar~~,
~~Sessions Court, Bijapur.~~
~~District Govt Pleader~~
Bijapur

Suits. 47 of 51

Bijapur.

For a declaration that the open site situated in the village Dhavalgi near the Muddebihal Bagewadi Road and measuring 32 x 50 cubits is of the plaintiff's ownership and for a consequential injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11665
Bombay Castle, 23rd July 1951.

Read Government Resolution, Legal Department, No.12613, dated the 8th November 1949.

Letter from the District Government Pleader, Bijapur No.304 dated the 12th May 1951, addressed to the Collector of Bijapur requesting Government's sanction to the defence of the Civil Appeal No. 153/1951 filed by the Plaintiff in the suit noted in the margin.

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No. 192 of 1949.	:	
Mukkanna Gurbasappa Kori .... Plaintiff; vs. The Province of Bombay. .... Defendant.	:	

Letter from the Collector of Bijapur No. L.A.W. 194, dated the 15th May 1951 forwarding the above.

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 153/1951 in the Court of the District Judge, Bijapur on the lines of the brief accompanying Government Resolution, Legal Department No. 12613, dated the 8th November 1949 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Bijapur, dated the 26th February 1951.

By order of the Governor of Bombay.

Issued. 23/7.

original

R. T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

BM.
20.7.

Submitted for Signature
PM
20.7.51
J.S. 20.7
D.S. (Civil)

Submitted after issue.
File in S.B.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1565
Bombay Castle, 23rd July 1951.

Read Government Resolution, Legal Department, No.12613, dated the 8th November 1949.

Letter from the District Government Pleader, Bijapur No.304 dated the 12th May 1951, addressed to the Collector of Bijapur requesting Government's sanction to the defence of the Civil Appeal No. 153/1951 filed by the Plaintiff in the suit noted in the margin.

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No. 152 of 1949. Mukkanna Gurbasappa Kori .... Plaintiff; vs. The Province of Bombay. .... Defendant.	May 1951, addressed to the Collector of Bijapur requesting Government's sanction to the defence of the Civil Appeal No. 153/1951 filed by the Plaintiff in

Letter from the Collector of Bijapur No. L.A.N. 194, dated the 15th May 1951 forwarding the above.

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 153/1951 in the Court of the District Judge, Bijapur on the lines of the brief accompanying Government Resolution, Legal Department No. 12613, dated the 8th November 1949 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Bijapur dated the 26th February 1951.

By order of the Governor of Bombay.

R. T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Submitted for signature

BM.
20.7.

Received on 29-3-1951. 49 67

Registered on

Decided on 2-1-1953.

Duration-

DISTRICT
IN THE/COURT OF BIJAPUR.

AT BIJAPUR.

Regular Civil app al No.153 of 1951 from Decree in Civil Suit No.192 of 1949 of the Court of the Civil Judge, Senior Division of Bijapur (Shri M.M.Nadkarni).

Shri K.R.Deshpande.

1. Mukkanna Gurasangappa Kori. — appellant. plff.

Vs.

Shri A.C.Angadi & G.L.Kanabur.

1. The Province of Bombay.
2. Mahar
3. Shivaji
4. Nagendra

Mabji Kapatkar — Respondents -defts.

Claim Rs.5/-.

This is plaintiff's appeal from a decree, dismissing his suit for an injunction.

2. The property is suit is an open site in the Gavthan of the village Dhavalgi on the road between Bijapur and Muddebihal. Plaintiff's ~~case is~~ say that it belongs to him and the defendant's case is that it belongs to Government. Exh.66 is the map prepared on December 25, 1947 in the inquiry under section 37(1) of the Land Revenue Code. This map is drawn according to scale and the learned trial Judge has marked letters in this map for a better understanding of the situations. Another map is Exh.71 which was drawn on March 15, 1947 when defendants Nos. 2 ~~and~~ 4, three brothers, applied to the Government for this and the adjoining part being given on lease to them in three strips. Exh 27 is the map drawn by the commissioner in this suit. I will refer to that map only when necessary. I will write this judgment with reference to the map Exh.66. The site in suit is to

the east of Muddebihal road and is marked AXYM in red pencil in the map Exh.66.

3. On January 14, 1947, defendant No.4 made an application to the Prant Officer for the lease of the property in suit and the adjoining property. The Prant Officer granted the northern portion EFGH to defendant No.4, the middle portion HGJI to defendant No.3, and the southern portion IJCK to defendant No.2 by taking from them the rent notes Exs 85 to 87, dated March 31, 1947.

4. On April 5, 1947, the plaintiff made an appli-cation (Exh64) to the Prant Officer, saying that the whole plot ABCD was his and that the Government had no right to lease any portion thereof to defendants Nos 2 to 4. He also made another application (Ex65) to the same effect to the Collector on April 23, 1947. So, the lease was set aside and an inquiry under section 37(2) of the Land Revenue Code was set a foot. On May 5, 1948, the Prant Officer rejected the plain-tiff's claim and declared that the whole site belonged to the Government(see the order Exh.68). The plaintiff preferred an appeal the the Collector, who dismissed it by his order Exh.69 on August 16, 1948. The plaintiff then filed an appeal to the Commissioner.

5. On May 30, 1949, pending that appeal, the plaintiff has filed this suit for an injunction saying that the property in suit was his ancestral property and contending that the orders of the Prant Officer and the Collector were not correct. Unfor-tunately he did not describe the property in suit with any precession by giving any map. But it is no longer in dispute that the property in respect of which he claims an injunction and which he claims as his, is AXYM in the map Exh.66. He added the Bombay State as defendant No.1 to this suit.

6. Defendant No.1's written statement in Exh.15, that of defendant No.4 is Exh.17 and the pursis of defendants Nos 2 and 3 adopting defendant No.4's contentions is Exh.18. Their contentions in brief are that the suit site belonged to Government and that the suit was barred under section 11 of the Revenue Jurisdiction Act.

7. The learned trial Judge over-ruled the defendants' contention based upon section 11 of the Revenue Jurisdiction Act. He however held that the property in suit did not belong to the plaintiff, that he was not in possession thereof at the date of the suit and also that the Government was the owner of it. In the result, he non-suited the plaintiff who has, therefore, come up in appeal.

8. This being a suit for injunction, the question regarding the ownership of the defendants or of any one except the plff need not be considered. The lower Court's finding that the suit is barred by section 11 of the Revenue Jurisdiction Act is not challenged before me. So the only two points to be considered are:

(1). Whether plaintiff proves title ?

(2). Whether he was in possession at the date of suit.?

9. I decide both the points against the appellant for the following reasons:-

10. Plaintiff's case is that a partition took place in his family about 100 years back, that the house shown as Madivalappa Rakkasgi's house in the map (Ex 66) was assigned to the share of Amateppa, the father of Madivalappa, and that the suit site AXYM fell to the share of his branch. But there is no evidence on the point apart from the hearsay evidence of the plaintiff, who is interested, in proof of the said partition, which cannot therefore be

11. In proof of his title, the plaintiff relies mainly on the description of the boundary in one document which is a gift deed regarding the pro-perty to the north of the property in suit and also upoh the list of owners of the sites at Dhavalgi and a rough sketch of the relevant positions of the houses in that village.These documents are Exs 67, 73 and 72 respectively, and I think, I should deal with them one by one.

12. The first document is Exh.67, a gift deed of the year 1919 executed by Madivalappa to Irawa Rakkasgi. The property gifted is marked property II in the map (Ex.77) and is the westernmost portion of the property shown as Madivalappa Rakkasgi's house in the map Exh.66. The estern boundary of that property has been described as the house of Gurusangappa Kori Tumbagi and the southern property which is part of the property in suit, has been mentioned as the open site of Gursangappa Kori. Gursangappa Kori is the name of the plainifff's father and it is urged for the plaintiff that from this description in this document, there is no doubt that the property in suit belongg to him. It is not disputed that the boundary description in documents between the two persons is an admissible piece of evidence.But the question is what weight should be given to such a description.The learned trial Judge holds that Gursangappa Kori, whose open space has been described as southern boundary of the said property, might not necessarily be the plaintiff's father.He says that he might be the person whose name has been mentioned as the owner of the eastern property.It is true that the name of the owner of the eastern property has been given as Gursangappa Kori with the word "Tumbagi" affixed to it and that that affix does not find a place in the case of Gurusangappa Kori, the owner of the southern property.But it is not improbable that

having once referred the word Tumbagi when describing the eastern property, that word might have been dropped when describing the southern property, though, of course, it is not possible to question the plausi-bility of the argument advanced for the appellant viz., that if the owners of the eastern and southern strips were the same, instead of mentioning their names in two places, the document would have said " to the east and south the property of Gursangappa Kori Tumbagi". Whatever that might be, the evidence on the record shows that the possibility of mistake is not excluded. The executant Madivalappa has been described in the document as an old man with one eye completely gone and one eye defective and ears useless. In these circumstances, it is not possible to exclude mistake and it would be extremely risky to hold the plaintiff's title proved to the property in suit, only on the strength of the southern boundary of the pro-perty conveyed under this document.

13. Moreover, the effect of the document, if any, has been nullified by the document passed by the plaintiff's father himself in the year 1905. That is a sale deed (Exh.62) in favour of Hanmantappa Ilager. The property conveyed is the one shown as Rajappa Ilager's house in the map Exh.66 or property I shown as owned by Hanmantappa Ilager in map Exh.77. If the property in suit had belonged to the plaintiff's father, he would never have failed to describe the southern boundary of the property conveyed under this document as be-longing to him. But he has not said so. He has merely described it as open space and also added towards the end of the document that the right that he had to discharge his water on the site in suit has been convey to the vendee under the document. If the property in suit had belonged to the plaintiff's father, he would never had mentioned that he had a right to discharge [redacted] on that site. That right is in the

easement, which suggests that the property in suit did not belong to the executant of the document but to some third person.In the result, therefore, it is impossible to hold the plaintiff's title proved on the strength of the document (Exh.67) which is ambiguous and might be mistaken, and the effect of which has been affaced by anotherdocument, viz. Exh.62(sale deed).

14. The other two document referred to are of the year 1875.They are Exs 73 and 72,The first one is the list of owners of sites at Dhavalgi and the second one, a rough sketch of the relevant position of houses. In the latter document, the blocks Nos. 162 to 165, have been described as belonging to Madivalappa Kori, Mahantappa Kori, Irawa and Hanmantappa Kori,.They appear to be properties marked 4,3,2 and 1 in the map (Exh.77) respectively.Down below these properties, a narrow strip has been shown.That strip has not been shown to belong to anybody.It is urged for the plaintiff that the property in suit is not narrow and that, therefore, the narrow strip cannot refer to it.His contention is that the property in suit must be the southern portion of block Nos. 164 and 165.But the map has not been drawn according to scale. And for aught we know, the narrow strips to the south of the above mentioned four properties might be the property in suit, the owner of which has not been shown in those documents and which therefore might belong to Government, as held by the learned trial Judge. And even if the plaintiff's theory is proved, half of that property must belong to Amateppa, the collateral of his ancestor. O course, plaintiff says that in the partition that took place between him and the plaintiff's ancestor, the whole of the property had fallen to his ancestor.But as stated above, thene is absolutely no evidence to show the partition and so I do not

55 73

think that the documents Exs 73 and 72 of the year 1875 can be of any use to the plaintiff in proof of his title.

15. Plaintiff relies upon the oral evidence of himself (Ex74) and that of Basappa Mallappa (Ex 78) But the plaintiff's interested word cannot be accepted. Regarding Basappa (Exh.78), his case is that at one time the property to the south of the property in question had belonged to his grandfather, that at that time the witness was staying in that property and that from the knowledge that he had acquired at that time he was definite that the property in suit belonged to the plaintiff.I do not, however, think that I should dilate much upon his evidence.He sails in the same boat with the plaintiff.He too had made an application to the Prant Officer claiming a part of the suit site as his and objecting to the sale proposed to be made thereof by the Government to the defendan s.So, I do not think that his evidence is disinterested.So, without giving many reasons for disbelieving him, I say that I agree with the learned trial Judge when he disbelieves him.So after takinginto consideration the documentary and oral evidence in this case, I have no hesitation in agreeing with the leanned trial judge that the plaintiff's title to the suit site is not proved; and the plaintifff must be nonsuited on the strength of this finding alone.

16. Even on the question of present possession, there is no evidence apart from the interested evide of the plaintiff.At present the plaintiff has no ho adjoining the open site in suit, his residential h being somewhere to the west of the house shown as Ilger's house in the map Exh.66 and not appearing, any of the maps referred to above.I cannot, there hold plain iff's possession at the date of the s proved.

17. Regarding costs, I do not think that the cases of defendant No. 1 and defendants Nos. 2 and to 4 are different or that it was necessary for defendants Nos 2 to 4 to appear through a different pleader. They claim through Government. So, I think, in the interest of justice, that I should award only one set of costs, i.e. to Government (respondent No.1).

Order.

18. Decree of the trial court is affirmed and the appeal is dismissed. Appellant do pay the costs of respondent No.1 and bear his own. Respondents Nos. 2 to 4 to bear their own costs.

2nd January 1953. Sd.N.S.Shrikhande.
District Judge.

"True Copy"
Ahmedabad

ಈ ಕೆಳಿಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಿಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.			
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	6			೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	-		
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	-	10	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	-		
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	-			೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ	-		
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	7	8	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	-		
೫. 5/— ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	15	-		೫. 5/- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	15	-	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ವಕೀಲರು..	24	10	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	-		
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ				೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು	-		
೮. ಕೋರ್ಟ ಖರ್ಚಿ ಬಾಬ್ತ	14	-	-	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ ...	-		
ಒಟ್ಟು....	68	-	-	ಒಟ್ಟು....	15	-	-

ಈ ಹೊತ್ತು ತಾರೀಖು 7 ತಿಂಗಳು 6 ಸನ್ 1948ನೇ ಇಸವಿಯು ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಸೊಪರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸರಿಯಾಗಿ ಅದೆ.

Sd/- M.G.Mommin.
ಹಿರಿಯ ಸಬ ಜಜ್ಜು.

Sd/- N.S.Shirkhande
ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜು.
9-1-53

Sd/- K.R.Deshpande
ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- A.S.Bhagwat
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

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2920—10,000—6-47—E(a)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ಕಾ: ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ್ರಂಥಿಡ್ಯೂಲ ೧)

ಹುಕುಮುನಾಮೆಯು

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ — ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ತಾಮು ಧಾರವಾಡ — ಇಲ್ಲಿಂ ನಿ॥

ಕೆಡ್ಡೆಲರ — ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೧೫೬ ೧೯೩೭ನೇ ಸ್ಯಾಲಿ

ಅಪೀಲಂಟ (ಮೊದಲನೇ ಮುದ್ದೇಲು)

(೧) ಮುಕ್ತಣ್ಣಾ ಗೂರನಿಂಗಪ್ಪಾ ಕೋಲಕಿ
ಇಂ, ಶೇಷಗಿರಿ ನಿಂ ಪವಳಗಿ ಎತ್ತುಪ್ಪ —
ಮುದ್ದೇಲುಮಾತ್ಯ

ವಿರುದ್ಧ

ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ)

(೧) ಪಿ ಹನ್ನಿನ್ನು ಆಳ್ವ ಬಾಂಬೆ
(೨) ಮುದ್ದಾರ ಮಗ ಮೊಳ್ಳೋಬೆ ಕಾವಿಚಕರ
(೩) ಶಂಭಾಜಿ ಇಂ
(೪) ನಾಡೋಜಿ) ನಿಂ ಪವಳಗಿ ಎತ್ತುಪ್ಪ
ಮುದ್ದೇಲುಮಾತ್ಯ

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಶಿವಿಲ್ ನೇ ವರ್ಗ ಸಬ್ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೬ನೇ
ಇಸವಿಯ ನಂಬರು ೧೭೬ನೇದರಲ್ಲಿ ತಾರೀಖು ೨೬ನೇ ೨ ತಿಂಗಳ ಸನ್ ೧೯೪೬ನೇ.
ಇಸವಿಯ ಹುಕುಮು ನಾಮೆ — ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಮುಕ್ತಣ್ಣಾ ಗೂರನಿಂಗಪ್ಪಾ — ಇವನು
ದಿನಾ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆ — ಮೇಲೆ ಧಾರವಾಡ — ಇಲ್ಲಿಯ
ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ — ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೭ — ೧ ತಿಂಗಳಿನ ೨ ತಾರೀಖಿನ ದಿವಸ ಮೇ॥ ಗ್ರಾ. ಶ್ರೀ ಕಂಡೆ ಜಜ್ಜ
ದಿನಾ, ಮುಂದೆ, ಅಪೀಲೆಂಟಿನ ತರ್ಫಿನಿಂದ ಶ್ರೀ॥ ಕೆ. ಆರ್. ವಿಜಯಕರ ಬಿ.ಎ.ಎಲ್.ಬಿ. — ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ರಿಸ್ಪಾಂಡೆಂಟಿನ ತರ್ಫಿನಿಂದ ಶ್ರೀ॥ ಆರ್. ಎಸ್. ಕಾಮಾಕರ ಬಿ.ಎ.ಎಲ್.ಬಿ. ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದೆದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಕೆಳ ಕೋರ್ಟಿನ ನಮ್ಮೂರ ನಾಮೆ ಕಾಯಮು
ಮಾಡಿ ಈ ಅಪೀಲ ರದ್ದು ಪಡಿಸಿದೆ. ಅಪೀಲಾರ್ಥಿಯು
ರಿಸ್ಪಾಂಡೆಂಟನ ವಗೈರೆ ಖರ್ಚು ಎನ್ನ ಪೈಕಿ ಪಡೆಯಲು
ಡಿಕ್ರಿ ಕೊಡಬೇಕೆಂದು. ರಿಸ್ಪಾಂಡೆಂಟನು ಅಪೀಲಾರ್ಥಿಗೆ ಖರ್ಚು
ಪಡೆಯಲು ಡಿಕ್ರಿ ಕೊಡಬೇಕೆಂದು.

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2920—10,000—6-47—E(a)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮುನಾಮೆಯು (ಆರ್ಡರ ೪೧, ಕಾ: ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ್ರಂಥಿಮ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಅಪೀಲಿಯೂ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ — ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಬೆಳಗಾವಿ — ಇಲ್ಲಿ ನಿ॥

ಕೆಸ್ಟರ — ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೧೫೬ ೧೯೪೭ನೇ ಸ್ಪೆಕಿ

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಅಮಲ್ದಾರ)

ವಿರುದ್ಧ

ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಪಿರಾದು)

ಈವಾಗ ಇಲ್ಲಿಯ ಶೆಷ್ಟಿಲ್ಲ ~~ಸೀ ವರ್ಗ ಸಬ್~~ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೭ನೇ ಇಸವಿಯ ನಂಬರು ೧೧೯ನೇದರಲ್ಲಿ ತಾರೀಖು ೨೬ನೇ ತಿಂಗಳ ಸನ್ ೧೯೪೭ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆ —ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಮುಕ್ಕಣ್ಣಪ್ಪಾ ಗುರುಸಿಂಗಪ್ಪಾ ——— ಇವನು ನಿಗಾರ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆ —— ಮೇಲೆ ಬೆಳಗಾವಿ ——— ಇಲ್ಲಿಯ ಶೆಷ್ಟಿಲ್ಲ ಜಜ್ಜ ——— ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೭ ತಿಂಗಳಿನ ೧ ತಾರೀಖಿನ ದಿವಸ ಮೇ॥ N.S. ಶೆಕಡೆ ಜಜ್ಜ ದಿನ. ಮುಂದೆ, ಅಪೀಲೆಂಟಿನ ತರ್ಫಿನಿಂದ ಶ್ರೀ॥ K.K. ದೇಸಾಯಿ ವಕೀಲರು ——— ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟಿನ ತರ್ಫಿನಿಂದ ಶ್ರೀ॥ ಅಂಗಡಿ B.A. ವಕೀಲರು ಶ್ರೀ॥ ಕಾಡಿಬಾಗ ವಕೀಲರು ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದೆದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಕೆಳಗ ತೋರಿಸಿದ ಪ್ರಮಾಣ ನಾಮೆ ಕಾಯಮು ಮಾಡಿ ಈ ಅಪೀಲ ರದ್ದು ಪಡಿಸಿದೆ. ಅಪೀಲೆಂಟನು ರಿಸ್ಪಾಂಡೆಂಟನ ಖರ್ಚಿಗೆ ಕೊಟ್ಟು ತನ್ನ ಖರ್ಚು ತಾನು ಪಡಿಸಿಕೊಂಡು ಹೋಗಬೇಕು. ರಿಸ್ಪಾಂಡೆಂಟನು ತಿಂದಾಳ ಇರು. ತನ್ನ ಖರ್ಚು ತಾನು ಪಡಿಸಿಕೊಂಡು ಹೋಗಬೇಕು —

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Suits.

Bijapur.

For a declaration that the open site situated in the village Dhavalgi near the Muddebihal Bagewadi Road and measuring 32 x 50 ■ cubits is of the plaintiff's ownership and for a consequentdal injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 6720 | E
Bombay Castle, 9th April 1953.

Read Government Resolution, Legal Department No. 11665, dated the 23rd July 1951.

Letter from the District Government Pleader, Bijapur No. 3, dated the 2nd January 1953, stating that the Civil Appeal No. 153 of 1951 in the suit noted in the margin was decided by the District Judge, Bijapur on the 2nd January 1953, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No. 192 of 1949.

Mukkanna Gurbasappa Korī ... Plaintiff;
vs.
The Provinceof Bombay. ... Defendant.

" Decree of the trial court is affirmed and the appeal is dismissed. Appellant do pay the costs of respondent No.1 and bear his own. Respondents Nos. 2 to 4 to bear their own costs. "

Letter from the District Government Pleader, Bijapur No. 187, dated the 29th January 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the appeal is recorded.

By order and in the name of the
Governor of Bombay,

original R T Katarki
R.T. Katarki,
Deputy Secretary to Government.

Issued 9/4

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

cks/8.4.

Submitted for signature
9/4
Supdt 9.4.53
D S (Civil)

8/6.2

Submitted after review
File in S. Bej. 2/50

Thu
10/4

Seefeld NB
10.4.53

S Bej. 2/50
11/4